

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

[AUTHORNAME]
[AUTHORTITLE]

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

DATE: August 1, 2003
TO: Honorable Mayor and Members of the City Council
FROM: City Attorney
SUBJECT: Mid City Athletic Area Amended Ordinance

MEMORANDUM OF LAW

INTRODUCTION

On August 5, 2003, the amended ordinance to dedicate the Mid City Athletic area will be presented to the City Council. The previous ordinance contained erroneous legal descriptions and included properties which are privately held, and a portion of one City-owned parcel with a deed restriction. This memorandum is being written in anticipation of questions which may arise regarding San Diego Charter section 55 and the City Council's authority to adopt the amendment.

QUESTION PRESENTED

May the City Council vote to amend San Diego Ordinance No. O-18766 (Feb. 22, 2000), which dedicated the Mid City Athletic Area without a vote of the people under San Diego Charter section 55?

SHORT ANSWER

Yes. If Council finds that the legal description included property that was not intended to be dedicated for park purposes, the ordinance may be amended to accurately reflect the property intended to be dedicated.

DISCUSSION

I. The City Council has the authority to amend the previous ordinance.

The power to legislate inherently includes the power to adopt, amend or modify laws that regulate municipal affairs. Cal. Const. art. 11 § 7; San Diego Charter §§ 1, 2, 11 and 16. The power of the City Council to legislate includes, by implication, the power to amend or repeal existing legislation. *Duran v. Cassidy*, 28 Cal App 3d 574 (1972). The Council has the legal authority to amend the original ordinance to attach a revised legal description to accurately reflect the intended prior Council action, if the Council determines based on clear evidence in the record that the legal description was in error.

Amending the former ordinance by way of providing corrected legal description attachments would not change the use of land properly dedicated as park land. Rather, the action would simply correct the record to conform to the original legislative intent. This Office believes evidence in the legislative record clearly demonstrates that the legal description contained numerous errors and did not accurately reflect the Council's action as discussed below.

II. Park Land Dedication

On February 22, 2000, the City Council approved the dedication of the Mid City Athletic Area as park land. San Diego Ordinance No. O-18766 (Feb. 22, 2000). The ordinance proposed to dedicate 31 public parks at once. List 1 attached to the original 1472 listed the 31 parks to be dedicated. On the list was the "Mid City Athletic Area" consisting of 40.88 acres. Also attached were erroneous legal descriptions. As a result, parcels not owned by the City, and a portion of one owned by the City with deed restrictions were unintentionally included in the Council's Action.

A. Parcels Not Owned by the City Were Not Dedicated.

In order for a property to be legally dedicated as park land the land must be first owned by the City. The City has the authority as a Municipal Corporation to "... own and acquire property within or without its boundaries for either governmental or proprietary, or any municipal purpose, either by succession, annexation, purchase, devise, lease, gift or condemnation...." San Diego Charter §1. Some parcels erroneously included in the original legal description are privately owned. The City did not own them, nor attempt to obtain them by any of the above methods.

The City Council did not have the legal authority to dedicate these parcels. A person can only dedicate property that he or she owns. *City of Eureka v. McKay & Co.*, 123 Cal. 666 (1899). One cannot convey property beyond what is conveyed to him. *Watson v. Sutro*, 86

Cal. 500, 525 (1890). A deed without a description or with an inadequate description is void under common law. *See* Harry D. Miller, *Miller & Starr California Real Estate* (3rd ed. 2002), section 8:46. Because the City did not own these parcels, their purported dedication was invalid and is not subject to the San Diego Charter section 55 restrictions.¹

B. The Deed Restricted Parcel Owned by the City Did Not Meet the Conditions Required to Be Dedicated.

In order for open space to be dedicated as park land, the title must be free of restrictions. Council Policy 700-17 specifies when properties owned by the City are to be dedicated for park purposes. All land acquired for resource-based park and recreation purposes and owned in fee by the City shall be dedicated by ordinance pursuant to section 55 of the City Charter within one year of the date that the City accepts the property deed. The Policy conditions any dedication on the property's deed itself. For a property to be dedicated the deed must be, "free of restrictions which might preclude dedication as park land." *Id* at Subd. III. C.

One of the City-owned parcels included in the erroneous legal description was the "firing range parcel" granted to the City subject to a deed restriction restricting its use to firing range purposes for the "use and benefit of the San Diego Police Department." See Attachment A. This property was accepted by San Diego Resolution No. 64802 (April 20, 1936) for police purposes. Generally, when property is granted to a public agency for a limited and definite purpose, the grant cannot be used for different purpose. *Save the Welwood Murray Memorial Library Com. v. City Council*, 215 Cal. App. 3d 1003, 1012 (1989). The deed's use restriction, as well as the Council's previous resolution adopting this parcel for limited police purposes, are inconsistent with the Council's Policy 700-17 regarding park land dedication.

C. The Legislative Record Indicates Neither the Privately Held, Nor the City Owned Parcel Was Intended to Be Dedicated.

The legislative record and maps in existence at the time of dedication are inconsistent with dedicating any private or City lands outside the Mid City Athletic Area. The location of the erroneously included parcels demonstrates that their inclusion in the original legal descriptions was in error and contrary to Council's intent. A variety of evidence exists which supports the intended area of dedication and where the Mid City Athletic Area was to be located. See Attachments B, C, and D. For over a decade, the Community Plan made reference to the Mid City Athletic Area being located east of Interstate 805. The 1990 Community Plan clearly distinguishes between the location of the Mid City Athletic Area east of Interstate 805 and a proposed Federal Boulevard Athletic Area west of Interstate 805 where the firing range is located. In addition, the acreage specified in the ordinance dedicating the Mid City Athletic Area (40.88 acres) is consistent with the acreage reflecting the Mid City Athletic Area in the

¹ No evidence exists to support a theory of dedication based on inverse condemnation by regulatory taking. Inverse condemnation requires a showing of among others, a deprivation of all economically viable use of the property. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). No such deprivation exists in this case.

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1998 Community Plan (also 40.88 acres). See Attachment D, table 2; and Attachment E. This further demonstrates that Council did not intend to dedicate private or other city-owned property outside the Mid City Athletic Area as park land. No evidence in the record or in supporting City documents indicates the Council intended to dedicate property outside the Mid City Athletic Area as it has been located or described in the Community Plan over the last decade.

CONCLUSION

The Council has the authority to amend San Diego Ordinance No. O-18766 (Feb. 22, 2000) to reflect the accurate legal descriptions of the Mid City Athletic Area provided the ordinance conforms with Council's original legislative intent.

Parcels not owned by the City cannot, without more, be dedicated. In addition, the City-owned parcel with its deed restrictions does not satisfy the legal conditions required for dedication. Above all, the legislative record and maps in existence at the time of the dedication support that Council did not intend to dedicate privately held or city-owned property outside the Mid City Athletic Area. Council may amend the former ordinance upon a finding that sufficient evidence exists to indicate an error in the legal descriptions. Upon which, San Diego Charter section 55 would not apply, nor does it limit the Council's authority to amend the original ordinance with a corrected legal description.

CASEY GWINN, City Attorney

By

Susanne M. Parsons
Deputy City Attorney

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Attachments
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